

L38VCOTT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JOHN COTTAM,

4 Plaintiff,

5 v.

16 CV 4584 (LGS)

6 6D GLOBAL TECHNOLOGIES, INC.,
7 6D ACQUISITIONS, INC.,

8 Defendants.

REMOTE BENCH TRIAL
(Via Zoom)

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9 New York, N.Y.
10 March 8, 2021
10:30 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge

14 APPEARANCES

15 JOHN COTTAM, pro se

16 CATAFAGO FINI

Attorneys for Defendants

17 BY: TOM M. FINI

18 ADAM B. SHERMAN
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(Remote proceeding via Zoom)

THE COURT: Good morning.

MR. FINI: Good morning.

MR. COTTAM: Good morning, your Honor.

(Case called)

THE DEPUTY CLERK: Before we begin, I'd like to remind the parties and anyone else listening that recording or rebroadcasting of this proceeding is prohibited. Violation of this prohibition may result in sanctions.

We're here before the Honorable Lorna G. Schofield.

THE COURT: So here we are again at long last, our trial. Welcome, everyone.

Let me just start by preadmitting exhibits; we discussed them at our final pretrial conference.

So I'm admitting Joint Exhibits 1 through 5, and 8 through 16. I'm admitting Plaintiff's Exhibits 1 through 10, 13 to 22, 24 to 27, and Defendants' Exhibits 1 through 11.

(Joint Exhibits 1-5 and 8-16 received in evidence)

(Plaintiff's Exhibits 1-10, 13-22, 24-27 received in evidence)

(Defendant's Exhibits 1-11 received in evidence)

THE COURT: I also want to remind the parties of the time limits that I set at the final pretrial conference, and that is half an hour for any cross, half an hour for redirect, except as to the plaintiff, Dr. Cottam; we agreed that we would

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1 not have redirect, but that he would be free to explain his
2 answers on cross; and that if he did so at any length, then I
3 would give the defendants some additional time on cross.

4 We also discussed ten minutes per side for summations,
5 plus any additional time that I need to ask questions.

6 So I think we all know each other, except I have not
7 met Mr. Hinton, who I understand is the expert for defendants.
8 Since he's an expert and not a fact witness, I'll permit him to
9 sit in on the testimony of plaintiff. And we'll begin now with
10 plaintiff's case.

11 So also just to remind everybody, I, of course, have
12 your direct testimony in writing, which is what I requested.

13 So beginning with plaintiff's case means we'll begin
14 with the cross of plaintiff.

15 JOHN COTTAM,

16 called as a witness on his own behalf,

17 having been duly sworn, testified as follows:

18 CROSS-EXAMINATION

19 BY MR. FINI:

20 Q. Good morning, Dr. Cottam.

21 You understand that you are under oath; correct?

22 A. Right.

23 Q. Could you please explain for the Court your educational
24 background.

25 A. I have an education in engineering science technology,

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1 which was heavily math-oriented, which was a two-year diploma.
2 And then I finished an electrical engineering degree with a
3 computer minor, which was also heavily math-oriented. And then
4 I did a master's degree in health systems, which was sort of
5 like an MBA geared towards productivity in the health care
6 industry. Then I did an M.D., four-year degree at USF; and
7 then I did a four-year dermatology residency in Tampa.

8 Q. Okay. So Dr. Cottam, you're a dermatologist; correct?

9 A. Right.

10 Q. You're a medical doctor; correct?

11 A. Right.

12 Q. Did you ever obtain a degree of any sort in economics?

13 A. No.

14 Q. Did you ever obtain a degree of any sort in finance?

15 A. No.

16 Q. Have you ever performed stock valuations in your career?

17 A. No.

18 Q. Would you concede that you're not an expert at stock
19 valuations?

20 A. Correct.

21 MR. FINI: Your Honor, since the facts regarding
22 waiver are undisputed and in our proposed findings of fact and
23 conclusions of law, I have no further questions and I move
24 under the Federal Rules of Evidence to strike any layperson's
25 opinion that attempts to offer an expert opinion on the

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1 valuation of stock.

2 THE COURT: Okay. I'll take that under advisement. I
3 think I've expressed my views before, and I'm unlikely to grant
4 that motion. But I'll take it under advisement and not rule
5 now.

6 MR. FINI: Thank you.

7 THE COURT: So you're saying you have no further
8 questions; is that right?

9 MR. FINI: That's right.

10 THE COURT: All right. So then let us move to the
11 defense case. We have Mr. Hinton's testimony by declaration.

12 And so Dr. Cottam, you're free to cross him.

13 Oh, wait, Mr. Street. I'm sorry, Mr. Street has to
14 swear him in first.

15 PAUL HINTON,

16 called as a witness by the Defendants,

17 having been duly sworn, testified as follows:

18 CROSS-EXAMINATION

19 BY MR. COTTAM:

20 Q. Okay. Good morning, sir.

21 Let's pull up your direct testimony declaration, page
22 4, last paragraph. I'd like to read it here.

23 It says: Any attempt --

24 THE COURT: Wait, wait. Can we wait just a minute?

25 I want to find out from Mr. Sherman how we're doing

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1 this. Okay. Go ahead.

2 Q. Any attempt to determine the effect on the value of 60
3 shares of the hypothetical unexpected increase in the number of
4 shares would be a challenging expert assignment. My opening
5 expert report included calculations showing how difficult this
6 would be --

7 THE COURT: Okay. I'm going to stop you just a
8 second. Our poor court reporter is taking it down verbatim; so
9 even though we can read it, she still has to take it down
10 verbatim. So if you wouldn't mind telling us where on the page
11 this is, and then speak slowly.

12 MR. COTTAM: It's on page 4, last paragraph.

13 THE COURT: All right. Okay.

14 And let me just ask the court reporter, did you get
15 all that or do we need to start somewhere?

16 THE COURT REPORTER: I got it, your Honor.

17 THE COURT: Okay. Great.

18 Go ahead, Dr. Cottam. Sorry to interrupt.

19 BY MR. COTTAM:

20 Q. He went on to say: The effects of which I found might not
21 even be possible to reliably estimate, due to the particular
22 and unique facts of this case.

23 So my question is you said here that possibly no
24 expert would be able to reliably estimate the effects of the
25 increase in shares; is that correct?

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1 A. Yeah. I said it's a very challenging assignment.

2 Q. I just would like a yes-or-no answer please.

3 A. Okay.

4 Q. Okay. You are aware that in expert --

5 THE COURT: Wait, wait, wait. We need the yes-or-no
6 answer. So what was the answer?

7 MR. COTTAM: He said yes.

8 THE COURT: Well, I'm going to ask him.

9 Did you say yes?

10 MR. COTTAM: Oh, sorry.

11 A. Can you restate the question? You say it may be -- it may
12 be -- it may not be possible to estimate a reliable answer to
13 the question. That's -- that's what I think I wrote, and so I
14 stand by that.

15 Q. Okay.

16 MR. FINI: And your Honor, the expert in a case like
17 this should be able to explain his answer.

18 THE COURT: Well, you get redirect for that.

19 MR. FINI: Okay.

20 BY MR. COTTAM:

21 Q. Okay. You are aware that in expert testimony, reliability
22 is one of the basic elements that must be met; correct?

23 A. I understand that, yes.

24 Q. You are aware that in this --

25 A. It does vary though based on the --

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(Indiscernible crosstalk)

Q. -- must be tested, right?

THE COURT: Wait, wait.

So you have to let him finish his answer.

MR. COTTAM: Oh. I was asking a yes or no.

THE COURT: Well, okay. So if you want yes or no, you have to preface your question.

MR. COTTAM: Okay.

Q. So I would like a yes or no if you're aware that in expert testimony, reliability is one of the basic elements that must be met; correct?

A. Yes. But how you -- how you meet it depends on --

MR. COTTAM: Your Honor, this is --

(Indiscernible crosstalk)

THE COURT: Okay. So here's what we'll do: If you can answer yes or no, you can answer it. If you can't, you can say, I can't answer yes or no. But if all you need to do is explain your answer, then your lawyer can take care of that on redirect. Okay?

THE WITNESS: Okay.

BY MR. COTTAM:

Q. This is yes or no: You're aware that in scientific method, theories must be tested; correct?

A. Yes.

Q. Yes or no: And if someone blocks any such analysis, since

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1 this is a unique situation, as you say, to actually test any
2 such theory, we would need to go back in time; correct?

3 MR. FINI: Objection.

4 THE COURT: Sustained.

5 Wait, wait, wait, wait. So just wait.

6 If there's an objection, you wait for me to rule.

7 And what's your objection?

8 MR. FINI: Your Honor, *Daubert*, as applied to stock
9 cases, you don't need -- not all experts have the same level of
10 scientific peer review. As we know, there are certain fields
11 of study where these *Daubert* --

12 THE COURT: Okay.

13 MR. FINI: -- objections --

14 THE COURT: Wait. I understand your objection.

15 I'll allow the question, not -- for whatever it's
16 worth. Go ahead.

17 BY MR. COTTAM:

18 Q. And if someone brought any such analysis, since this is a
19 unique situation, to actually test such a theory, we would need
20 to go back in time; correct?

21 MR. FINI: Objection.

22 A. No.

23 THE COURT: Overruled.

24 Mr. Hinton, when your lawyer objects, wait for me to
25 rule on the objection. If I sustain the objection, don't

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1 answer the question. If I overrule it, then you should answer.

2 Okay?

3 THE WITNESS: Yes. Thank you, your Honor.

4 THE COURT: Sure.

5 BY MR. COTTAM:

6 Q. Okay. This is a yes or no: And so we cannot test any
7 expert theory in this case, including your own, if we can't go
8 back in time; correct?

9 MR. FINI: Objection.

10 THE COURT: Sustained.

11 You don't have to answer that.

12 Go ahead.

13 MR. COTTAM: Okay.

14 Q. In the scientific method -- this is a yes or no -- if we
15 can't test a theory, there is no way to come up with an
16 estimate of the error rate of that theory; is that correct?

17 MR. FINI: Objection.

18 THE COURT: Overruled.

19 MR. FINI: That means you answer, Paul, when you're
20 ready.

21 A. Yes.

22 Q. Yes or no: And when we can't get any analysis on error
23 rate, we cannot even quantify any reliability; is that correct?

24 THE COURT: Go ahead.

25 A. Yes.

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1 MR. COTTAM: Your Honor, this is taking a long time,
2 and I've got a lot of questions to go through. Could we
3 somehow either delay the time or get these answers quicker
4 please? These are yes or nos.

5 THE COURT: Okay. Why don't we just say this: I take
6 it you want a yes or no answer for all your questions; is that
7 right?

8 MR. COTTAM: Unless otherwise stated, yes.

9 THE COURT: Okay. So let's assume that. You don't
10 have to say that every time. But, you know, cross-examination
11 is not you're just reading a bunch of questions as fast as you
12 can. So he's entitled to listen to your question and then
13 answer yes or no. If he can't, he can say I can't answer yes
14 or no.

15 So go ahead. You may need to revamp your questions
16 and skip a few, I don't know.

17 MR. COTTAM: Okay.

18 BY MR. COTTAM:

19 Q. Sir, did you perform an analysis with all of the
20 calculations you needed to?

21 MR. FINI: Objection.

22 THE COURT: Sustained.

23 I'm not sure there is an analysis in his declaration.

24 MR. COTTAM: Okay. Well, his declaration includes his
25 attachment of his actual damages report.

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1 THE COURT: Okay. All right.

2 I'm not sure it's really relevant, but you can
3 certainly ask.

4 MR. COTTAM: Okay.

5 BY MR. COTTAM:

6 Q. Did you perform an analysis with all of the calculations
7 you needed to?

8 THE COURT: You may answer.

9 A. Sorry, I don't understand the question. I obviously
10 submitted an analysis.

11 MR. COTTAM: Your Honor, this is a yes-or-no --

12 A. -- limited in scope --

13 THE COURT: Wait. Just wait.

14 He said he didn't understand the question. Now he's
15 trying to tell you why he didn't understand the question.

16 MR. COTTAM: Well, I could repeat --

17 THE COURT: Well, he didn't understand it; it's not
18 that he didn't hear it.

19 A. I think my expert report stands for itself, right. There's
20 an analysis in there; it has a limited scope. And I think I
21 delineated the scope. I had the information I needed to
22 conduct the analysis that I did in that report within the scope
23 that's defined.

24 Q. Okay. Yes or no, did you present a complete report to this
25 federal court?

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1 A. What do you mean by "complete"?

2 Q. Well, what you define as complete.

3 MR. FINI: Objection.

4 THE COURT: Well, okay. So did you say what you
5 thought you needed to say in your report? I'm going to
6 rephrase the question just so it's understandable to me.

7 Mr. Hinton?

8 THE WITNESS: Well, Judge, one of the issues is there
9 was a subsequent -- I never got a chance to respond to
10 plaintiff's March declaration. And there was a change in the
11 approach that plaintiff is taking in terms of the valuation and
12 damages issues. And so I wasn't able to complete my
13 articulation of my opinions with regard to that change in
14 methodology.

15 THE COURT: Okay.

16 BY MR. COTTAM:

17 Q. Sir, were you hired to simply say there were no damages?

18 MR. FINI: Objection.

19 A. No.

20 THE COURT: Overruled.

21 Q. So if I tried to sell my shares in a few weeks, it would
22 definitely depress the price; correct?

23 THE COURT: Wait. I need some clarification.

24 If you tried to sell your shares of what?

25 MR. COTTAM: Of my 6D stock.

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1 THE COURT: Okay.

2 A. It depends.

3 Q. Okay. Do you have any proof whatsoever that I would
4 attempt to sell my shares in a few days or weeks?

5 A. No.

6 Q. So you're speculating then; correct?

7 A. No.

8 Q. And you have no absolute proof that it would drop the price
9 precipitously, do you, if I did sell my shares?

10 A. It depends.

11 Q. So you're speculating on that as well; correct?

12 A. No.

13 Q. Are you aware that 6D bragged about their potential growth
14 and their listing on the supposedly prestigious Russell
15 indexes?

16 MR. FINI: Objection.

17 THE COURT: Overruled.

18 A. I'm aware of their press releases.

19 Q. Okay. Do you know investors weren't -- do you know if
20 investors weren't planning on holding their stock for years?

21 A. Which investors?

22 Q. Any of them.

23 A. I haven't studied that question.

24 Q. So you could have made assumptions that are wrong; is that
25 correct?

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1 A. I didn't make an assumption about that.

2 Q. Let's take a look at page 6 under number 13.

3 THE COURT: Wait, wait, wait. Page 6 of what?

4 MR. COTTAM: On the same document we're on.

5 THE COURT: Okay. Thank you. Paragraph 13.

6 Thank you.

7 MR. COTTAM: Yes, number 13.

8 Q. It says: Cleantech, the name of 6D, was notified by NASDAQ
9 that it would be delisted. Thus, any analysis of stock value
10 would also need to account for the risk of potential delisting.

11 My question is, yes or no, are you aware of any
12 specific delisting warnings of 6D that 6D got, not CTEK, from
13 the NASDAQ after the merger?

14 A. No.

15 Q. Question, yes or no: Are you aware that 6D and CTEK were
16 completely different companies?

17 A. Yes.

18 Q. Are you aware their value and operations were completely
19 different?

20 A. Yes.

21 Q. Were you under the impression that CTEK was merging with 6D
22 in a normal merger?

23 A. What do you mean by "normal"?

24 Q. Like not a reverse merger.

25 A. What's a reverse merger?

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1 Q. Well, you're an expert; you should know.

2 Do you know that 6D has no relation whatsoever to
3 CTEK's operations?

4 A. Yes.

5 Q. So let's go to page 6 under 12. It says here:

6 My expert report included some of this analysis to
7 illustrate the tremendous challenges in trying to value 6D
8 stock under these unique set of facts. But I did not provide a
9 complete analysis of damages, as I understood that was
10 plaintiff's burden.

11 So my question here is, these tremendous challenges
12 would, quote, require significant hypothetical analysis partly
13 because of this situation being so unique; is that correct?

14 A. I don't know what you mean by "hypothetical analysis."

15 Q. Well, you're doing an analysis that would be bringing a
16 hypothesis for the actual result, so it's hypothetical.

17 THE COURT: What was the question again? Sorry.

18 Q. The question is these tremendous challenges would require
19 significant analysis requiring hypothetical issues partly
20 because this situation was so unique; correct?

21 A. I don't agree with that. Your concept of hypothetical is
22 not well-defined.

23 Q. Okay. Would your analysis, which isn't even complete in
24 your own words, would be a onetime theory calculated just for
25 these unique circumstances; correct?

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1 A. No.

2 Q. There would be no way to test that analysis, would there?

3 A. No.

4 Q. If the only way to test it is to go back in time and put
5 those stocks in people's hands, then the analysis would be
6 hypothetical and, hence, purely speculative; correct?

7 A. No.

8 THE COURT: Objection sustained.

9 This is argumentative. We don't need argument; just
10 ask questions.

11 MR. COTTAM: All right.

12 Q. Let's see here. Let's pull up your original declaration,
13 Joint Exhibit 5. On page 13, under 29 of this original
14 declaration, it says: This adjustment preserved the 3.2
15 percent ownership share of 6DT due to the investors.

16 My question here is, are you aware of --

17 THE COURT: Wait, wait, wait. This is paragraph 29?

18 MR. COTTAM: No, on page 13 under 29.

19 THE COURT: Page 13.

20 MR. COTTAM: Original declaration, not this one.

21 Joint Exhibit 5.

22 THE COURT: So Joint Exhibit 5, I'm looking on the
23 left, this is Joint Exhibit 5. Is his original declaration
24 attached to his testimony declaration?

25 MR. COTTAM: Yes.

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1 THE COURT: You might find it there then.

2 But in the meantime, let's not waste time. You can
3 read it slowly so I can understand it.

4 MR. COTTAM: Okay.

5 BY MR. COTTAM:

6 Q. It says: This adjustment preserved the 3.2 percent
7 ownership share of 6DT due to investors.

8 My question is, are you aware that this Court has
9 deemed the one-to-one transfer promised as unambiguous, and
10 that investors never obtained a percentage ownership?

11 A. I'm aware of the judge's ruling.

12 Q. Okay. Did you ever read the agreement?

13 A. Yes.

14 Q. Were you told what the language meant or did you make up
15 your own mind as to the meaning when you read it?

16 A. It wasn't my job to interpret the agreement.

17 THE COURT: And moreover, the interpretation of the
18 agreement is not at issue here. I've already found that the
19 agreement was breached in that the subscription -- in that the
20 people who subscribed didn't get all the shares they were
21 promised. Go ahead.

22 MR. COTTAM: All right.

23 Q. So let's go to page 9 and 10 under number 24. It says
24 here: As a combined result of the offering share exchange,
25 etc., it says that investors in the offering would first become

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1 shareholders of Cleantech, and then as a result of the
2 financing exchange shareholders in the publicly listed entity
3 6DT.

4 So my question is, who told you that investors would
5 first become shareholders in CTEK?

6 A. I read the agreement.

7 Q. You don't know then that that's incorrect?

8 A. No.

9 Q. So if you read the agreement, sir, are you aware there's
10 nothing in there that has the investors investing in CTEK?

11 MR. FINI: Objection, your Honor.

12 This line of questioning is just not relevant to the
13 issue.

14 THE COURT: That's true. But I'll let him go ahead.

15 Q. You said you read the agreement; correct?

16 A. Yes.

17 Q. Are you aware that investors invested in a company called
18 6D Acquisitions?

19 A. Yes.

20 Q. Are you aware that those shares were supposed to be
21 transferred into the post merger entity on a one-to-one basis?

22 A. I forget all the details of the transactions as we sit
23 here, but I did describe it in detail in my report.

24 Q. Okay. So per your testimony, we are dealing with a unique
25 situation, like you've never seen such a situation before;

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1 correct?

2 MR. FINI: Objection.

3 THE COURT: Overruled.

4 A. I mean, there are always unique characteristics --

5 Q. Well, you said this is a unique --

6 THE COURT: Wait. Just wait. Wait.

7 When he's talking, just let him finish.

8 Finish your sentence, Mr. Hinton.

9 A. Yes. But this is a uniquely challenging case. But the
10 issues that have to be analyzed and that I analyzed are well
11 understood. And it's well understood the impact that they can
12 have on prices.

13 Q. Okay. Have you ever seen any valid research on such a
14 unique situation before?

15 MR. FINI: Objection.

16 THE COURT: Overruled.

17 A. There are lots of studies that deal with --

18 THE COURT: Go ahead.

19 There are lots of studies that deal with?

20 A. There are lots of studies that deal with different aspects
21 of lack of marketability. They don't always deal with all of
22 the combination of issues that we have to deal with here in the
23 same study, but that's why it requires expert analysis.

24 Q. Okay. This is a yes-or-no question: Since it is a unique
25 situation, the challenges involved in reliably predicting the

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1 stock price may be almost impossible in your own words; is that
2 correct?

3 A. It may be, yes. I wrote that. It may be.

4 Q. Question, yes or no: And any analysis would not be able to
5 be tested, since we cannot go back in time or create a parallel
6 universe; is that correct?

7 MR. FINI: Objection.

8 A. I disagree --

9 THE COURT: Overruled.

10 A. I disagree with that premise.

11 Q. Okay. Question: Have you presented any statistical
12 analysis on the error rate on what analysis you did bring?

13 A. I haven't --

14 Q. No. No or yes.

15 MR. FINI: The witness gets to explain his answer,
16 your Honor.

17 Q. There's no explanation --

18 THE COURT: Just -- so, Mr. Hinton, you can say no or
19 yes or I can't answer that. And your lawyer can follow up if
20 you have explaining that you want to do.

21 A. What is the test statistic, Mr. Cottam, that you're asking
22 me to report an error rate about?

23 Q. In the scientific method when you're coming up with
24 theories and you are an expert witness, you need to produce a
25 statistical error rate on your analysis or your theory so that

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1 we can understand what are the chances of your theory being
2 correct or not. That's part of the whole situation and
3 scientific method and Rule 702.

4 So my question again is, you presented no statistical
5 analysis on the error rates of what analysis you did bring; is
6 that correct?

7 A. You're wrong. Your interpretation is wrong.

8 Q. Okay.

9 A. When you report a test -- when you report a test statistic,
10 when you report an estimate, you are right, you are correct,
11 you have to have a known rate of error. But there are many
12 situations -- and this is one of them -- where the methodology
13 that you bring does not involve developing a test statistic.

14 So in this case, there are many facts that you have to
15 evaluate and weigh in order to assess --

16 Q. So what I'm asking, sir --

17 A. -- the impact.

18 Q. So a yes-or-no question.

19 A. There isn't --

20 Q. This is a yes-or-no question.

21 (Indiscernible crosstalk)

22 MR. FINI: Your Honor --

23 THE COURT: Wait. Just wait. Everybody just please
24 wait. Everybody is talking on top of everyone else, and the
25 court reporter can't get it down, so we can't do that.

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1 So Mr. Hinton, you've made your explanation. And what
2 you've basically said is that the answer you're getting to this
3 question is nonsense because it assumes something that isn't
4 valid. But you still have to answer the question.

5 And the question was, was there any statistical
6 analysis on the error rate for the analysis you did? And
7 there's a yes-or-no answer to that question.

8 So, Mr. Hinton, if you could just answer it.
9 A. Right. I didn't develop a test statistic, and so there is
10 no error rate analysis.

11 Q. All right. Thank you.

12 MR. FINI: But, your Honor, I just want to place an
13 objection. If someone asks someone, Did you clean the
14 helicopter blades on your car, there's a sense in which the
15 answer is no. But you really should not force the witness to
16 say no to that, since it really -- there are no helicopter
17 wings on the car. So to say --

18 THE COURT: That's a good point. I take your point.
19 But in this case --

20 MR. FINI: And the fact of the matter is that
21 evaluating stocks uses factors that people in the --

22 THE COURT: Wait, wait, wait, wait.
23 We don't need argument; we don't need lawyers'
24 argument right now.

25 So Dr. Cottam, would you just please continue with

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1 your questions.

2 MR. COTTAM: Okay.

3 THE COURT: And I'll try and keep the helicopter
4 analogy in mind.

5 BY MR. COTTAM:

6 Q. Let's pull up Joint Exhibit 4. And let's go to Appendix C
7 on page 43. Under number one, quantifying the potential impact
8 of trades on liquidation prices in an illiquid market. It
9 reads under 7, 1.7: The impact of prices of selling the large
10 additional volume of 60 shares is difficult to estimate because
11 it depends on the demand for 6D shares and may be unknown if
12 volumes exceed market depth.

13 It also says at number 8: The extent of demand for
14 shares is difficult to estimate, not least because it is
15 continually changing. This is another reason why it may not be
16 possible to develop an estimate of the impact on prices on the
17 immediate liquidation of large numbers of shares that is not
18 speculative.

19 Number 9: We do not know the depth of the market for
20 CTEK shares prior to the offering or 6D shares during the
21 subsequent period. We do know the volume of shares traded.
22 Making the assumption that the market depth was equal to the
23 volume of shares traded on each day, the prevailing market
24 price would provide for estimating the price at which
25 additional shares could have been sold into the market on each

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1 day. In reality, doubling the trading volume would be expected
2 to depress prices as the sellers' offers were matched with less
3 willing buyers in the market.

4 So my question here is, yes or no, in general, you
5 stated here that if significantly more shares are sold from one
6 day to the next, day-to-day, especially on a thinly traded
7 stock, then the price of the stock will likely drop
8 significantly; is that correct?

9 A. It depends on the direction of the trades.

10 Q. You're stating here that in reality, doubling the trading
11 volume would be expected to depress prices as the seller offers
12 were matched with less willing buyers. So you're generally
13 stating here, again, that especially on a thinly traded stock,
14 then the price of the stock will likely drop significantly if
15 there were significantly more shares sold from one day to the
16 next; is that correct?

17 A. Right. I'm talking about --

18 Q. Yes or no?

19 A. -- very specific --

20 THE COURT: Wait. Just go ahead and give us the
21 answer. Mr. Hinton, go ahead and answer.

22 THE WITNESS: I'm sorry, Judge.

23 THE COURT: No, it's fine.

24 A. It's not a general statement.

25 THE COURT: Dr. Cottam, what is this document? You

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Hinton - cross

1 just said Appendix C on page 43, and I see we're at paragraph
2 9. What is the document?

3 MR. COTTAM: This is Joint Exhibit 4 in his original
4 damages analysis.

5 THE COURT: So is this his expert report or --

6 MR. COTTAM: Yes.

7 THE COURT: Okay. I just need you to identify it not
8 only so you can find it, but so I understand what it is we're
9 looking at.

10 MR. COTTAM: Okay. All right.

11 THE COURT: Okay. And I believe you have three
12 minutes left.

13 MR. COTTAM: Oh, you're kidding me. Your Honor, this
14 has taken a lot more. We've got to get through the most
15 important part here.

16 THE COURT: Well, why don't you get to it right now.

17 MR. COTTAM: Okay. Well, we got to get going here.

18 Let's pull up Plaintiff's Exhibit 26, 6D trading
19 history.

20 Q. So let's take a look at the stock price on 6D on 6/25 to
21 6/26. Do you see a significant increase in shares sold on 6/26
22 to 6/25?

23 A. It's higher than the 6/29.

24 Q. There was an increase from over 229,000 to over two million
25 shares sold; correct?

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Hinton - cross

1 A. On that day, yes.

2 Q. And the price held fairly constant, didn't it?

3 A. Well, it went from 6.5 to 6.8.

4 Q. Right. So can you take a look at the stock price on 8/24
5 to 8/25. Do you see the price -- or the volume went up by a
6 factor of 18 times to over three million shares, and the stock
7 price actually almost tripled; do you see that?

8 A. I'm sorry, which date?

9 Q. This is --

10 THE COURT: August 24.

11 Q. -- 8/24, 8/25.

12 A. Yes, the volume goes up and the price goes up.

13 Q. Yes. Let's take a look at 7/23 to 24. The volume
14 increased by over three times, and the price went up, not down,
15 a little bit; is that correct?

16 A. Yes, on that day.

17 Q. Okay. So let's take a look at 7/28 to 7/29. The volume
18 went up 3.3 times; and the stock price went up, not down,
19 again, by a little bit; correct?

20 A. I'm sorry, you're moving a bit fast. Which day --

21 Q. 7/28 to 7/29.

22 A. Yes, I mean, these are --

23 Q. Okay. Let's take a look at 6/24 to 6/25.

24 THE COURT: Okay. So, Dr. Cottam, if your point is --
25 you don't have to find every single one. If your point is --

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Hinton - cross

1 MR. COTTAM: -- the point, your Honor --

2 (Indiscernible crosstalk)

3 THE COURT: And the document is in evidence. So you
4 don't have to get the witness to say every one of them.

5 MR. COTTAM: Yes, I understand.

6 But this is -- this is a point that there's 11
7 instances in an extremely short time that is exactly the
8 opposite of Mr. Hinton's theory.

9 THE COURT: All right. So why don't we do this: Why
10 don't you just tell us the dates. Because the document is in
11 evidence; you don't have to ask the question.

12 So we've already got one, two, three, four of them.
13 Give us the rest.

14 MR. COTTAM: Okay. We've got 6/24 to 6/25.

15 THE COURT: Okay. Hang on.

16 MR. COTTAM: That's 5.9 times the stock price drop by
17 less than two percent. We have 5/1 to 5/4.

18 THE COURT: Okay.

19 MR. COTTAM: With a five times increase and a drop of
20 less than a half a percent. We have 5/5 to 5/6, with an
21 increased volume of 4.7 times, and the stock price drop by only
22 two percent.

23 We have 7/1 to 7/2, the volume increase by over two
24 times and the price went up by four percent. We have 7/2 to
25 7/6, the volume went up by 25 percent and the stock price went

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Hinton - cross

1 up, not down, by 28 percent.

2 We have 8/4 to 8/5, an almost 14 times increase in
3 volume; and the stock price went up, not down, by 6.6 percent.

4 And then the last one is 9/4 to 9/8. The stock price
5 went up by 27 percent when the volume increased by over 4.6
6 times.

7 So that's 11 instances in an extremely short time that
8 is exactly the opposite of Mr. Hinton's general theory.

9 THE COURT: All right. So you don't need to argue
10 that. And now you've made sure that those facts are clear to
11 the Court. I understand.

12 MR. COTTAM: Okay. Thank you.

13 THE COURT: Do you want to ask one final question?
14 Because your time is up.

15 MR. COTTAM: So, okay.

16 THE COURT: Or if not that's fine too.

17 BY MR. COTTAM:

18 Q. My last question, I guess, would -- if we have a
19 hypothetical, unproven, untestable theory that is inconsistent
20 with real-world situations, then no reliable principles and
21 methods could have even been applied; is that correct?

22 A. I can't answer that.

23 Q. Okay.

24 THE COURT: Okay.

25 We could have redirect now.

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Hinton - redirect

1 REDIRECT EXAMINATION

2 BY MR. FINI:

3 Q. Good morning, Mr. Hinton. I have some follow-up questions.

4 A. Good morning.

5 Q. Mr. Hinton, are there established criteria and methods that
6 experts use in the field of valuing stock?

7 A. Absolutely. And in this particular circumstance, they are
8 particularly important because we're dealing with a situation
9 where it's well-established that you can't rely on the market
10 price as the right measure of value. And this is an issue that
11 many economists -- but also practitioners, because the SEC and
12 the IRS and in the case law have struggled with. And if you
13 can't use the market price, what are you supposed to do?

14 And there's a well-established set of factors that
15 you're supposed to consider to weigh in the particular
16 circumstances how you -- how you should consider deviations
17 from the market price.

18 Q. So, Mr. Hinton, although stock valuation may not be an
19 exact science or a scientific field per se, are there
20 nevertheless established standards in literature as to what an
21 expert should consider in arriving at a stock price?

22 A. Yeah. Well, in this case, the SEC itself has recognized
23 that there isn't an automatic procedure or methodological
24 formula for coming up with a determination. Instead, they
25 recognize that this is more akin to an appraisal situation

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Hinton - redirect

1 where different factors have to be weighed in considering
2 deviations for market price. And so those qualitative
3 judgments require intensive analysis and should be based in
4 available evidence. But they are not necessarily amenable to
5 developing a test statistic for which there's a known rate of
6 error.

7 Q. Okay. And in offering your opinions in this case, have you
8 considered the factors that experts in the field do consider in
9 determining the value of stock?

10 A. I have. The important factors here are also -- they're
11 listed in economic literature, but they are also listed in the
12 case law. It's well-known that the circumstances -- the types
13 of factors you need to take account of are how the liquidity in
14 the market, which means how thinly traded or how much trading
15 volume there is relative to the amount at issue, the size of
16 the blocks -- block trades, the size of the amount, the
17 quantity of shares attempted to be sold, the financial
18 condition of the company. Is it an already established
19 company, is it mature, and does it have -- what's the extent of
20 the risks to its operations, they have a known track record.

21 The particular situation here where you have
22 restrictions on the stock that are -- in these case the prevent
23 transfer under certain circumstances as a special case, and
24 there may be other factors like certain shares may -- and
25 transactions may result in some sort of control premium. So

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Hinton - redirect

1 these are all factors that you have to take into account. Most
2 studies will look at one aspect of this or another.

3 In our case we also have the issue of dilution. So
4 it's rare that you'll be able to find one study that combines
5 all of these issues together. So in general, your going to
6 have to -- you're going to have to conduct analysis of each and
7 weigh those factors when you come to a determination.

8 Q. Mr. Hinton, when you wrote your original expert report on
9 March 14, 2018 --

10 MR. FINI: Adam, could you please bring up doc number
11 63, which is plaintiff's summary judgment -- original summary
12 judgment motion from August 11, 2017. Could you please bring
13 that up.

14 Your Honor --

15 THE COURT: Wait. So just so I know, this is not in
16 evidence?

17 MR. FINI: This is not an exhibit because I didn't
18 know that -- I didn't know what Mr. Cottam's examination would
19 be, but this is in response to one of his points.

20 THE COURT: Do you want to just -- I will admit it
21 because it's already on the docket; but just so we can have it
22 identified as an exhibit, what would be your next exhibit
23 number? I could actually probably tell. So it would be
24 Defendants' Exhibit 12.

25 MR. FINI: Yes.

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Hinton - redirect

1 THE COURT: Do you want to offer it as Defendants'
2 Exhibit 12?

3 MR. FINI: Yes.

4 THE COURT: Okay. All right. And I can take judicial
5 notice of it under the rules of evidence, so I will admit it.

6 (Defendants' Exhibit 12 received in evidence)

7 BY MR. FINI:

8 Q. So Mr. Hinton, we've marked as Defendants' Exhibit 12 the
9 plaintiff's summary judgment motion dated August 11, 2017.
10 When you wrote your expert report, did you consider the damage
11 theory that the plaintiff had offered in the case?

12 A. Yeah, I mean that was my charge at that time.

13 Q. And --

14 A. -- which is --

15 MR. FINI: Adam --

16 A. -- respond to it.

17 MR. FINI: Adam, could you bring us to the
18 second-to-last page of this exhibit please, which is page 15.

19 Q. Mr. Hinton, if you look at the last paragraph on page 15,
20 one line from the bottom, it says: When the restriction
21 expired on March 30th, 2015, 6D Global was trading at 8.64 a
22 share. Is it correct that the plaintiff was measuring damages
23 by looking at what the price of the stock would have been six
24 months after the breach in March of 2015?

25 A. Yes. It appeared that the plaintiff's theory was that you

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Hinton - redirect

1 should look at the time period after the restrictions were --
2 might have been able to be lifted -- they didn't actually get
3 lifted in March -- but to look at the prices in the market
4 after that time and use that to estimate what they could have
5 been sold for. And so that was the framing of my original
6 report, was to consider whether that -- how those numbers would
7 work out. Unfortunately, there's nothing here -- we didn't see
8 a plaintiff's expert report, and so they are wrong obviously --

9 THE COURT: I'm just --

10 (Indiscernible crosstalk)

11 THE COURT: I'm going to interrupt for just a minute.
12 I'm sorry. But just in the interest of the brevity of time,
13 I've already determined that the price that has to be -- the
14 value of the shares that we're talking about has to be
15 determined as of the closing date. And could someone just
16 confirm to me that that's September 29th, 2014?

17 MR. COTTAM: Yes, it is.

18 THE COURT: Okay. So we don't need to talk about
19 March. The plaintiff's theory is not about March now. And I
20 understand that your original report was aimed at a theory that
21 is no longer relevant, so we can move on.

22 MR. FINI: Okay. Adam, could you please bring up
23 document 348, which is plaintiff's proposed findings of fact
24 and conclusions of law.

25 THE COURT: So this is docket number 348.

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1 MR. FINI: We'll make that -- what's the next exhibit,
2 Adam?

3 MR. SHERMAN: 13.

4 THE COURT: It's 13.

5 MR. FINI: Okay.

6 BY MR. FINI:

7 Q. So Mr. Hinton, earlier in the case, before the plaintiff
8 shifted his damage theory, he was arguing that the valuation is
9 the date that the restriction should have been lifted.

10 MR. FINI: Adam, could you turn to page --

11 MR. COTTAM: Your Honor, I'd like to object at least
12 just to that characterization. I didn't really change my --

13 MR. FINI: Your Honor --

14 THE COURT: Okay. Wait, wait, wait.

15 Okay. You're right. Just -- let's just wait. That
16 is argument. All he wants to do is tell me something that's in
17 this document. So why don't you just point that out.

18 BY MR. FINI:

19 Q. Mr. Hinton, paragraph --

20 MR. FINI: Adam, could you turn to page 41 of 50, if
21 you go by the court docket number at the top.

22 THE COURT: Paragraph?

23 MR. FINI: And it's paragraph 232.

24 BY MR. FINI:

25 Q. Mr. Hinton, was plaintiff's paragraph 232 the first time

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Hinton - redirect

1 you had seen plaintiff attempt to value the stock as of the
2 audit of the breach?

3 A. It was.

4 Q. And this document was submitted to the Court after your
5 opening declaration; correct?

6 A. It was.

7 Q. Have you analyzed what the effect of the restriction and
8 dilution would be as of the date of the breach in response to
9 plaintiff's new argument?

10 A. Yes. I mean, I've been anticipating seeing something from
11 plaintiffs for a long time. This was the first time I had
12 an -- I saw something to respond to. And I disagree with it
13 because it doesn't take account of all the factors that
14 establish that you need to account that are unique in the
15 situation. So just focusing --

16 THE COURT: Actually, if you could stop just a minute.

17 Your lawyer had asked you whether you had analyzed the
18 effect of, and then I missed the rest of it. But I would
19 really like the answer to that question before you explain
20 anything. So could I get the question again please?

21 BY MR. FINI:

22 Q. After you received the plaintiff's theory of damages as of
23 the date of the breach, did you analyze the effect of the
24 restriction and dilution as of the date of the breach?

25 THE COURT: Wait.

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Hinton - redirect

1 Just have you analyzed the effect of the what?

2 MR. FINI: The effect of the restriction.

3 THE COURT: Yes. And?

4 MR. FINI: And the dilutive effect of additional
5 shares as of the date of the breach.

6 THE COURT: Okay. Thank you.

7 A. Yes. And in addition, the most important issue being the
8 lack of the thinly traded -- the lack of liquidity and other
9 factors.

10 The two factors you list are not the only two that you
11 have to consider, according to the established procedures here.
12 You have to take into account those other factors I listed
13 earlier. And those had been a part of factors that I had been
14 developing empirical evidence on and was anticipating an
15 opportunity earlier in the case actually to respond to some
16 sort of theory from plaintiff. So yes, I did do that analysis
17 and I have my own views about that.

18 Q. What did you conclude?

19 THE COURT: So I'll say it for you -- just wait. I'm
20 going to say it for you, Dr. Cottam.

21 This is all new, as far as I know, unless it's
22 something that is in the most recent declaration. And --

23 MR. COTTAM: And it's not.

24 THE COURT: So -- pardon? It's not? No, no, no, just
25 wait.

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Hinton - redirect

1 And so I -- if it's new and it hasn't been disclosed
2 before, I'm not prepared to accept it now. But I am curious,
3 I'm not sure -- it depends what relationship it has to what
4 he's already said. So you can answer it, but it is subject to
5 an objection that I assume Dr. Cottam is making.

6 MR. COTTAM: Yes, definitely.

7 THE COURT: Okay. So you may answer it, but just
8 understand, I'm not sure what weight, if any, I would give it.
9 But I'm curious what your answer is.

10 BY MR. FINI:

11 Q. So, Mr. Hinton, I asked you what you concluded.

12 A. I concluded -- well, firstly, that the 17 percent number
13 that is stated here is not the right -- is wrong, a wrong way
14 to think about the -- in fact, it's only one of the many
15 factors. When you take into account the other factors,
16 particularly the fragility of the company, the restrictions,
17 the thinly traded nature of the shares, and the size of the
18 block that we're talking about, that, to a reasonable degree of
19 certainty, I would conclude that the intrinsic value of these
20 restricted shares, if 2.9 million shares were to have been
21 issued on that date, would have been in the penny stock range,
22 by which I mean the only way you could find someone to acquire
23 those shares at that time was -- would be for a few cents in --
24 essentially treating it as a speculative bet, right, as you
25 would with any penny stock investment. It's essentially a

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1 lottery ticket investment, highly volatile and uncertain.

2 Q. And even in your original expert report and declarations,
3 did you explain why the plaintiff had not even reasonably
4 approximated his damages?

5 A. I did. And you know, here you see it again, right. I
6 mean, you can't just pick out one factor, which is the
7 dilution, and ignore all the other effects. The trading volume
8 on this date was 309 shares.

9 What plaintiff is arguing is that 2.9 million shares
10 could be valued at that price on that day. That's 10,000 times
11 more shares. So even the examples that Mr. Cottam pointed to
12 in the trading history after this date, you don't see, one day
13 to the next, 10,000 times more trading volume.

14 I've always, from the beginning, identified this
15 thinly traded issue of this stock as being a key issue. But
16 there are the other issues as well, right. There's as soon as
17 you put a restriction on a stock and you can't actually sell
18 it, it means that you're exposed to the operational and market
19 risk associated with the business operations of that company,
20 because you're only going to be able to realize some return on
21 your investment in the future.

22 And this is a highly speculative company with no track
23 record. If you look at the financials of the company, the
24 10-Ks, its recent experience admittedly for Cleantech is that
25 it made losses. So it doesn't have a track record. It's a

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1 microtech stock. These are all additional factors.

2 THE COURT: So could I ask a couple of questions?

3 One is we've been assuming that \$8.30 was the market
4 price on the relevant date, the closing date. And I just
5 wanted to clarify, was that the mean between the highest and
6 the lowest, or was that the closing price, or what was the
7 8.30, just out of curiosity?

8 THE WITNESS: I believe that's the closing price; it's
9 the conventions report daily prices at the close. But this
10 is -- this is a situation akin to what happened in -- I've
11 looked at some of the case law, the *Dabinowitz* case, where, you
12 know, a similar penny valuation was determined to be -- was
13 found.

14 THE COURT: So could I ask you a question there? And
15 again with the caveat that I'm not sure that I can really
16 accept in an evidentiary sense a new opinion that hadn't been
17 disclosed before.

18 But when you talk about it being -- having a value in
19 the penny stock range and taking into factors all the ones that
20 you've listed that I won't repeat, I take it you didn't say,
21 Well, we're going to discount it by 30 percent for the
22 restrictions, we're going to discount it by 25 percent because
23 it's thinly traded, and so forth and so on. I gather this was
24 more of an impressionistic valuation based on the impact these
25 various factors together would have on the willingness of a

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1 buyer to engage in the transaction as opposed to some precise
2 price; is that right?

3 THE WITNESS: Well, it's right to some degree, but it
4 starts from the literature on restricted stock discount. So I
5 wanted to start -- to give you an idea of how I got to that
6 opinion. As I pointed out, the restrictions, the effective
7 restrictions, it's just one factor that is in play here, right.
8 Even if you had an Apple stock that's traded with high degrees
9 of volume and is a very secure company and you issued
10 restricted stock, you're still going to have to issue that
11 stock at a discount. And there are economists who have studied
12 that. And one of the exhibits -- if you want to pull up the
13 Silber study, Adam, is an example of where economists tried to
14 look at those examples of restricted stock.

15 THE COURT: And where is this? Where is this in
16 evidence?

17 THE WITNESS: It's one of the exhibits.

18 MR. FINI: Adam, what is it, Defendant's 3? Which one
19 is it, Adam? Adam, are you there?

20 THE COURT: He's there, but he's on mute.

21 MR. FINI: Oh, Adam --

22 MR. SHERMAN: Here's Defendants' Exhibit 3.

23 MR. FINI: Is that the Silber article?

24 (Indiscernible crosstalk)

25 MR. FINI: It's Defendants' Exhibit 3.

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1 THE COURT: Got it. Thank you.

2 THE WITNESS: So as a starting point, when I was
3 thinking about, okay, so how are we going to value essentially
4 the intrinsic value at the date of the breach, right, which is,
5 I think, to understand what we're talking about, we know we
6 can't sell the shares, right, so this is not -- you know, this
7 is not using a hypothetical sale, you know, modeling, you know,
8 what you could sell it for later on. It's basically saying,
9 Well, what's the intrinsic value on that date. And it's
10 essentially an option value, the option that you have once the
11 restriction is lifted in the future to sell.

12 And because, you know, this is -- essentially,
13 you're -- you have to think about all the factors that would
14 affect the value of this option.

15 Now, one of the ways that economists have done this is
16 they've said, Oh, okay. Well, when there are these big
17 companies, and some of them issue restrictive stock at a
18 discount, we can look at all these companies. And then we can
19 start to look at how big these restricted stock discounts are.

20 And in this study, this is an example with this one
21 firm, actually the data on this is from the '80s, but you'll
22 see that --

23 THE COURT: Could I just interrupt you again?

24 I recall your saying in your report or declaration,
25 something you'd submitted in the past, that even though one

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1 could find these studies of well-established stocks and to do
2 something about the effect of restriction there, that that's
3 not necessarily transferable to a case like this, where the
4 stock is very thinly traded and there are various other
5 variables that will affect the valuation of the stock.

6 And so -- I mean, I understand that, so you don't --
7 and also I think one of the --

8 THE WITNESS: No, no. I think what I wanted you to
9 get from this is that the range of values here go from, you
10 know -- the largest discount here, it's still not large enough
11 to account for those other factors. So if you look in this
12 study, they look --

13 MR. FINI: Mr. Hinton, is there a page you're pointing
14 to?

15 THE WITNESS: Yeah. If you look at the next page
16 you'll see there's a table at the top here. And you'll see on
17 the top line, number one, percent discount, the average is
18 33.75, and the maximum is 84.

19 And so what I'm saying is this is just one issue, and
20 it's really being measured for companies that are not the sort
21 of fragile, thinly traded microtech companies. Generally
22 speaking, the 69 companies in this study are more
23 well-established publicly traded companies.

24 So the 84 percent, it's just a starting point.

25 Now you've got to say, Okay. If you're just dealing

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Hinton - redirect

1 with the issue of there being a restriction, you get to 84
2 percent. Now we've got to think about these other things.
3 Now, being thinly traded, this is not just thinly traded, this
4 is extraordinarily thinly traded on that day. If you look at
5 the fact there was only 309 shares traded on that day, we're
6 talking about a block of shares 10,000 times larger, like maybe
7 three million.

8 So in my first report --

9 THE COURT: Wait, wait, wait.

10 Could I ask a question again? I mean, you've likened
11 this to an option.

12 THE WITNESS: Yes.

13 THE COURT: And so isn't the question then the trading
14 volume on some hypothetical future day judged as of September
15 29th and not the trading volume on that day?

16 THE WITNESS: Right. I think you're right to some
17 extent. We're using -- this goes to another issue, which is
18 the -- you're right that if you want to think about it from the
19 point of view of the ultimate -- ultimate ability to sell in
20 the future, you would have to make some assumption about how
21 much liquidity there's going to be in the future. But your
22 best estimate of how much liquidity there is in the future is
23 going to be what you know about liquidity today, right.

24 So what you really should be doing is saying, I
25 shouldn't use -- it's hindsight to use any information in the

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1 future; but yes, it's an expectational -- it's an expectational
2 concept, yes. But so we're really looking at the liquidity on
3 that day, not because we're saying we would have actually sold
4 it on that day, but as a measure of what it would have, you
5 know, been in the future.

6 THE COURT: Or you could look at it as the liquidity
7 for the prior week or the prior month or -- and you could also
8 look at how much fluctuation. I mean --

9 THE WITNESS: Right. That's right.

10 THE COURT: I think there are about five minutes left,
11 so I don't want to hijack any more of your time.

12 THE WITNESS: So how much liquidity there is is
13 measured relative to how big a trade you want to make, right.
14 And what I'm pointing out here is it's 10,000 times bigger,
15 right. So what that means is, you know, if you try to
16 transact, you're either not going to be able to transact or
17 you're going to be able -- or it's going to have a huge effect
18 on the price. That's just one way of looking at that problem.

19 When you look at the other factors as well that you're
20 supposed to look at, so besides the trade, the thinness of the
21 liquidity, the fact that there is no track record of the
22 company, as soon as you have a restriction, you're essentially
23 locked into the operational risk of this company. And one of
24 the risks is, you know, it could be delisted. And if it
25 becomes an OTC stock, that reduces and depresses liquidity even

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1 further.

2 So when I said it's a unique circumstance, what I
3 meant was although each of these factors has been studied and
4 is known to have an important impact, there aren't really any
5 studies you can look at where they sort of said, What if you
6 have all these combination of things all at the same time?

7 So I think that in my assessment, having looked at
8 those different factors -- and I did study the liquidity in
9 quite some detail in my first report -- you also do have to
10 include the dilution effect. You put all those factors
11 together, starting at 84, you're going to end up with a
12 discount that's approaching 100 percent. It can't be exactly
13 100, because we know that an option always has some intrinsic
14 value; there's always some chance that your lottery ticket is
15 going to pay off. And so it can't be nothing.

16 But we have to remember in this case, plaintiff
17 actually made money on the sale of their shares.

18 MR. COTTAM: Objection, your Honor.

19 THE WITNESS: And so even if we can say --

20 MR. COTTAM: Your Honor, I object. I don't think
21 making money has anything to do --

22 THE COURT: Wait, wait, wait, wait, wait, wait, wait,
23 wait, wait. You can't interrupt with that.

24 Go ahead. All we're trying to figure out is what the
25 value of the shares was on September 29th.

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1 THE WITNESS: Right.

2 And what I'm saying is if you start with the 84
3 percent, and then you take into account these other factors,
4 you're going to be pushing the discount -- effective discount
5 down approaching, you know, 100 percent. It can't be 100
6 percent; it has to be something. But -- because it's --
7 essentially you think of it as an option.

8 The problem here is that doesn't mean there's any
9 damages necessarily, because there's an offset. The plaintiff
10 actually made money when they sold the shares they actually
11 received. And so whether or not that intrinsic value -- this,
12 sort of, option value -- is larger in value than the amount
13 that they actually made on an investment is speculative. It's
14 not -- we don't know whether there was actually any damage at
15 all. And that actually distinguishes this case from some of
16 the other case law, you know, as I've seen it.

17 BY MR. FINI:

18 Q. Mr. Hinton, could you just explain why the later sale of
19 the stock with a profit of 70,000 is relevant? Could you just
20 explain that a little bit more.

21 MR. COTTAM: Objection, your Honor.

22 I don't believe it's relevant to --

23 THE COURT: Overruled.

24 I want to hear what he has to say.

25 A. Well, two ways to think about it.

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Hinton - redirect

1 Either you think about what actually happened and you
2 pare it to a but-for world where Mr. Cottam got 2.9 million
3 shares. And you have to compare what actually happened, which
4 is, he sold his shares and he got the money, versus what would
5 have happened. You can't separate those things out. That's
6 one way to think about it.

7 The other way to think about it is if you want to
8 think about the conjecture that Mr. Cottam is making, which is
9 what should have happened is he should have got 2.9 million.
10 If that had happened, then the true price -- the price would
11 have been pushed down, and essentially the amount at which he
12 acquired his original shares was inflated.

13 So either way, you can't just ignore what he actually
14 received from this investment. You have to look at -- you
15 know, I think the most coherent and simplest way of thinking
16 about it is what happened in the actual world. You need a
17 complete counterfactual that is realistic and looks at all the
18 implications of that.

19 In the counterfactual, there's 2.9 million,
20 potentially even more if the other investors were to have
21 gotten the same treatment. And you look at what you would have
22 gotten in that case, and you have to compare the two. And
23 that's how you get damages.

24 If you made money in the actual world, he'd have to be
25 claiming that he would have made more money, and that's not --

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Hinton - redirect

1 THE COURT: Could I just ask a question?

2 You spend a lot of your time in one of the directions
3 talking about each of your four scenarios and the assumptions
4 to be made. And it seemed to me -- well, it seemed to me that
5 you didn't like any of the assumptions. And I understand your
6 time is up, but if you'd just answer my last question.

7 But if you were picking one of the assumptions as the
8 most logically coherent one, as I recall, one is that only Dr.
9 Cottam got the increased number of shares, one was that all of
10 the subscribers got the increased number of shares, one was
11 that all of the shareholders got the increased number of
12 shares, and the other was that the stock splits just didn't
13 happen, which I don't get at all, but, anyway.

14 But in terms of which one seems most coherent to you
15 or most probable or appropriate to use in your analysis, which
16 do you think is most appropriate and why?

17 THE WITNESS: Well, first of all, just before I answer
18 your question directly, I would just say everything I've said
19 before in terms of the impact on the damage claim on the 2.9
20 doesn't depend on me making some determination about --

21 THE COURT: I understand.

22 THE WITNESS: -- between the different scenarios.

23 THE COURT: I completely get that.

24 THE WITNESS: But obviously if it is my opinion -- and
25 I think I stated this in my first report, is that whatever

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Hinton - redirect

1 counterfactual you come up with, it should be realistic. You
2 can't, sort of, change -- you know, change one, sort of,
3 isolated fact and not look at the implications of that or the
4 other relevant facts in the case under that counterfactual. It
5 has to be a complete realistic counterfactual.

6 THE COURT: I get that.

7 None of them seem very realistic to me, because they
8 didn't really happen. So which one do you think is the most
9 realistic?

10 THE WITNESS: Well, I think the least realistic one is
11 the one where only Dr. Cottam gets 2.9 million, because he was
12 one investor amongst 34 who all --

13 THE COURT: And I read your affidavit. I understand
14 the why. So just tell me which one you would pick, if you can.
15 Or say that I can't pick one.

16 THE WITNESS: Well, the thing is, Judge, it depends.
17 It's combined issue of law and fact at this point. Because I
18 think you already ruled, you know, that there's not a
19 connection -- you don't see a connection between the merger
20 agreement and the subscription agreement.

21 But if there is a connection between those two, and
22 then suddenly you were to unexpectedly issue more shares to
23 one, sort of -- one, sort of, subset of the shareholders, the
24 other shareholders would object, right. And so you would have
25 to take that into account.

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Hinton - redirect

1 Now, if you have a counterfactual where you're saying,
2 Well, that's not -- you don't see that -- there isn't a
3 connection, you don't see that connection, then at least --
4 then you would have to recognize that a realistic scenario
5 would be to treat all the investors who are similarly situated
6 and these are -- the same subscription agreement would be
7 treated similarly.

8 Because otherwise, other subscribers, investors, would
9 come forward and say -- and bring their own case and ask for
10 additional shares. And basically, every time someone else came
11 forward and sued for their, you know, appropriate treatment
12 under that same contract, you'd get more shares being issued.
13 And that would have pushed down the prices further from
14 dilution and these other effects. And so, you know, it starts
15 to make no sense.

16 THE COURT: Okay. I understand. And I also
17 understand the problem with making those assumptions, as you
18 point out in your --

19 MR. FINI: Your Honor, if I may. And I was very
20 happy -- of course I wanted the witness to answer your
21 questions. I just had one question, and could I just ask one
22 final?

23 THE COURT: You can ask one final question, yes.

24 BY MR. FINI:

25 Q. Mr. Hinton, Dr. Cottam pointed to some days, many months

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Hinton - redirect

1 after the date of the breach, where there was some higher
2 trading volume. And he pointed to the prices on those days as
3 somehow undermining your position.

4 Do you agree with the suggestion that he was making?

5 A. No, he -- his premise was all back -- was faulty, because I
6 wasn't making a general statement, which is whenever there's
7 more volume, the price goes down.

8 And if you read my -- the Appendix C to my original
9 report, I cite -- you know, this is a really well-studied, you
10 know, area of market microstructure.

11 The whole idea is I was talking about a directional
12 trade. So when you're trying to dispose of -- you know, sell a
13 large volume of shares into the market, more shares than the
14 market has -- you know, can absorb easily, it starts to push
15 down the prices. And that's well understood. You have to look
16 at the direction of the trade.

17 And the question is then -- but if you look
18 historically at any day, obviously in any day in the market,
19 you can't look at the daily trading volume and say which
20 direction those trades were being made in. It's nonsensical.
21 It doesn't tell you anything. And there also may be other
22 reasons why the prices went up and down on any particular day.

23 So that exercise really -- didn't really speak to the
24 issue of what happens in a market -- and this is something that
25 economists, including Maureen O'Hara, who I cite in my first

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1 report, is an expert on market microstructure --

2 THE COURT: I'm just going to -- go ahead and finish
3 your sentence.

4 (Indiscernible crosstalk)

5 THE WITNESS: Right. So how is it that prices are
6 affected if you try to sell way, way more shares than have
7 historically been sold in a market?

8 THE COURT: Okay. I'm going to stop you right there.

9 So before I close the evidence, I had one question for
10 Dr. Cottam. So if you'll put your witness hat back on. And
11 you're still under oath.

12 And I think I am correcting a typographical error, but
13 you tell me. And it goes to the issue of waiver.

14 You said that you learned that you received 420,290
15 shares on March 14, 2014. But I think you mean March 14, 2015,
16 given the chronology of events. But I just wanted you to
17 confirm that.

18 MR. COTTAM: Yeah, it might be a typo. But, no, I
19 learned somewhere around the time -- I can't remember, because
20 it's a long time ago. But it's right around the time when the
21 stocks were supposed to be cleared at around March -- or the
22 end of March or April of 2015.

23 THE COURT: Okay. Thank you.

24 All right. So if everybody is okay to continue, what
25 I'd like to do now is hear the ten-minute arguments from each

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Summation - Mr. Cottam

1 side. And I will hear from Dr. Cottam first, if you'd like to
2 go first.

3 MR. COTTAM: Okay.

4 THE COURT: Or if you'd like to go last, I'll let you
5 go last.

6 MR. COTTAM: No, I'll go first.

7 THE COURT: Okay.

8 MR. COTTAM: First, I think it's important in this
9 case to summarize the background.

10 CTEK was a shell company with zero operations before
11 the agreement was even dated. And CTEK lied about this on
12 their SEC documents, as did 6D, when they inherited this
13 status. Mr. Kang, who was also selling the stock to the
14 investors -- and UC Tech was a shell company and actually
15 required this, yet misrepresented CTEK in the agreements as a
16 going concern. CTEK and 6D were controlled --

17 THE COURT: So I'm going to -- can you just talk a
18 little bit more slowly, one, so I can understand you; and two,
19 so the court reporter could get it.

20 MR. COTTAM: Okay.

21 This merger was a reverse merger and was planned as
22 such and was hidden from investors. This was specifically lied
23 about in SEC documents to induce investment. 6D eventually
24 admitted the merger was a reverse merger, but still reported it
25 was not a shell company on SEC documents, when it was.

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Summation - Mr. Cottam

1 6D told Radnor and hence the investors that the
2 six-month restriction would end automatically March 29th, 2015.
3 They then reneged on this, after reneging on the one-to-one
4 transfer promise, changing the requirements for unrestriction
5 three times. These requirements were called onerous and
6 impossible and far beyond normal by Kibrik, Mr. Alexander
7 Kibrik of Radnor.

8 6D forced investors against their will to hire lawyers
9 and get language, put in letters to 6D in order to clear their
10 stock after they were never informed of this and after 6D and
11 6D Acquisitions got their money.

12 Benjamin Wey was indicted in 2015, along with William
13 Uchimoto, who was also Radnor's counsel. One of the companies
14 in the indictment was CTEK. 6D was delisted per NASDAQ due to
15 what the NASDAQ said were bald-faced assertions by Tejune Kang
16 and his board related to Benjamin Wey's hidden involvement,
17 transfer of unreported stock to Benjamin Wey associates at the
18 time when my shares should have been clear, and other
19 misrepresentations in the delisting hearings and other filing
20 errors.

21 I believe defendants have an unsubstantiated claim
22 that the relatively small addition of 17 percent in the number
23 of shares would have completely destroyed the stock price
24 beyond the relatively simple calculation that will reduce this
25 price by 17 percent. They could only, in many of their

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Summation - Mr. Cottam

1 situations, come up with these claims of impossibility of
2 performance.

3 The effects of dilution are quite simple really. You
4 just take the company, if it's worth \$1,000, if one share is
5 outstanding, one share is worth 1,000. If ten shares are
6 outstanding, each is worth \$100 if the company's value remains
7 constant.

8 With respect to liquidity, there's actually zero
9 evidence that the extra shares would decimate the stock price
10 and there would be attempts at immediate sales. There would
11 not be necessarily at all. Claiming any investor would try to
12 sell their stock immediately is not true. The only reason
13 investors would do this is because of the discovery of the
14 entire scheme of material misrepresentations that I have
15 documented in detail.

16 There was no other reason to believe that there would
17 have needed to be an immediate liquidation of any shares, let
18 alone millions of them. Stock prices cannot be predicted
19 reliably by any mathematical analysis. An October 2009 study
20 by New Zealand's Massey University tested more than 5,000
21 technical analysis strategies in 49 countries, showing that not
22 one strategy generated returns that aren't predicted by chance.

23 Defendants' expert claims used improper data ranges
24 for some analyses that are outside of when my stocks should
25 have been cleared and after delisting, they are based on false

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Summation - Mr. Cottam

1 assumptions of share dumping and fly in the face of these
2 actual historical prices in 6D during and after unusually high
3 volumes of trading in periods in which my stock should have
4 been able to be sold.

5 On one, just one, unusually high volume day of trading
6 that we talked about, June 26th, 2,360,000 shares sold in just
7 one day, and the price held quite constant, in fact, trading at
8 about 33 percent higher within one week. On many other
9 relatively large volume trading days and weeks, the price
10 remained stable or even increased and, on August 25th, when
11 over three million shares were sold in just one day, the stock
12 price actually jumped over 177 percent, almost triple the
13 price.

14 Defendants' expert methods are not able to be tested
15 in the real world. I believe I have presented reproducible,
16 stable, logical, and common sense estimates given these two
17 scenarios that I have written up that are fitting with the law
18 and real-world events, which is reasonable.

19 Any theory of the effect of liquidity is impossible to
20 calculate and actually test. In fact, as Mr. Hinton explained,
21 it may not be possible to develop an estimate of the impact on
22 prices of the immediate liquidation of a large number of shares
23 that is not speculative. Therefore, such theories cannot be
24 assessed for reliability or validity or any statistical
25 analysis, which is why he never brought a statistical analysis

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Summation - Mr. Cottam

1 of the error rates of any of his analyses, which is required
2 per Rule 702. In fact, in what is probably the most stunning
3 admission in this case --

4 THE COURT: Could I ask you a question about that?

5 MR. COTTAM: Yes. Sorry.

6 THE COURT: Are you saying that because it's
7 difficult -- if not impossible -- to test the effect of
8 liquidity, that it should be ignored then in the valuation
9 process?

10 MR. COTTAM: Well, I believe that that is something
11 that simply cannot be tested. You have to be able to test
12 scientific theories. When you're bringing theories to a court,
13 you have to say, This is my theory. And this shows how it's
14 been tested before. And unfortunately, in these situations
15 when people breach contracts, we're left with imperfect
16 situations. You always will be. But those imperfect
17 situations should be resolved in favor of the one who is not in
18 breach of the contract. And that's in the law too.

19 THE COURT: So my question is, are you saying that the
20 way to do that is to ignore the effect of liquidity on the
21 valuation of your shares?

22 MR. COTTAM: Well, what I'm saying, your Honor, see,
23 because I think that we should take a look at what the true
24 trading history was. Because you have real-world events that
25 you can see with 6D. And when you see the real-world events,

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Summation - Mr. Cottam

1 then you can say really what would have this situation, in
2 terms of liquidity, been.

3 So let's take a look -- rather than all this
4 hypothetical, I can come up with something hypothetical, he can
5 come up with something hypothetical. Who wins? So let's take
6 a look at a real-world situation on multiple times, multiple
7 days, where incredibly increased numbers of shares were dumped
8 on the market and the prices went up incredibly completely
9 opposite of Mr. Hinton's stated theory that if these things
10 from day-to-day increase by two times, there would be a
11 decrease in the stock. So I think you look at the real-world
12 analysis when it comes to this liquidity, because all you are
13 left with is an argument by the way then.

14 THE COURT: So what are you saying in terms of the
15 bottom-line number that you are suggesting? Are you taking
16 that into account in deciding what the per share price is that
17 I should use for the estimate of damages?

18 MR. COTTAM: Right. Because I think you're right,
19 your Honor, I don't think it's something that you can -- you
20 can come up with that isn't pure speculation and hypothetical.
21 And so that becomes then something that's purely, you know, up
22 to the Court to decide.

23 THE COURT: Okay. Sorry for interrupting. Go ahead.

24 MR. COTTAM: That's okay.

25 So I was going on.

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Summation - Mr. Cottam

1 Any theory of the effective liquidity is impossible to
2 calculate and actually test. And then he explained this.
3 Therefore, such theories cannot be assessed for reliability and
4 validity. Then, in fact, what is the most stunning admission,
5 Mr. Hinton claims the analysis required would be so monumental
6 that he literally only provided an incomplete analysis.

7 So his analysis, by his own testimony, is
8 hypothetical, unproven, can't be tested, there's no research
9 for this unique situation, there's no statistical analysis on
10 error rates of anything he's produced. It is purely
11 speculative, therefore, and no reliable principles and methods
12 that could even be applied can be brought here.

13 He's used incorrect assumptions. He reads clear
14 language incorrectly in the agreement. His numbers are
15 inconsistent with these real-world events, and he has an
16 incomplete analysis.

17 So to me, it doesn't just fail *Daubert*, it fails *Frye*
18 and it fails the entirety of Rule 702. They simply cannot
19 overcome their burden.

20 This expert's main claim now is that I lose because I
21 don't have an expert. And I cannot imagine a more disturbing
22 perturbation of the expert witness function.

23 Given the above, what defendants are asking this Court
24 to do is:

25 One, set new legal precedent that is, two, based on

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Summation - Mr. Fini

1 unproven math; that, three, cannot even be tested; and four,
2 therefore, cannot produce any calculable error rate; five, is
3 inconsistent with real-world trading events; six, makes
4 assumptions that are easily argued against; seven, uses
5 parameters that are impossible to foresee or control for; and
6 eight, is based on assumptions that are not based on the true
7 period in which plaintiff's stock should have become
8 unrestricted; and nine, aim to allow defendants with egregious
9 actions to escape the consequences of those actions.

10 So in contrast to defendants' position, my positions
11 are stable, the numbers are easily calculable and repeatable
12 and hypothetical -- and now not using unstable or untestable
13 hypothetical analysis.

14 I believe I suffered damages. There was no waiver at
15 all. And defendant shortchanged me of about two and-a-half
16 million shares. They then did everything in their power to
17 stop me from clearing what stock they did give me, while they
18 got theirs sold. This trading pattern that you see in 6D is
19 clear of what happened here. Thank you.

20 THE COURT: Okay. Thank you.

21 I'll hear from the defense.

22 MR. FINI: Thank you, your Honor.

23 And thank you for conducting this trial via Zoom
24 during the pandemic. I really appreciate your public service.

25 Your Honor, this case involves an utter lack of proof

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Summation - Mr. Fini

1 by the plaintiff as to even a reasonable approximation of his
2 damage.

3 Up until his belated direct testimony affidavit, the
4 plaintiff in multiple filings in this Court had a very clear
5 theory of damage. The plaintiff, of course, has the initial
6 burden to at least reasonably approximate his damage. And the
7 plaintiff's theory was set forth, for example, in his original
8 summary judgment motion before Judge Sullivan on August 11,
9 2017, doc 63. At page 15 of that brief, as we saw, he
10 contended that the way you measure the effect of the
11 restriction is to look at what the price was six months after
12 the breach and what the stock was actually trading for. He
13 again repeated that in the summary judgment briefs before your
14 Honor on October 2nd, 2019.

15 Our expert did two things along the way: First, he
16 explained in response to that why that number would be
17 incorrect, even if you looked at the world after the breach.
18 But our expert did more. He said that if you looked at the
19 date of the breach and the trading volumes, that it would be
20 very difficult, if not impossible -- and when he used the word
21 "speculative," he was talking about that the plaintiff, it
22 would be very difficult for the plaintiff to establish the fact
23 of damages, even the fact of any damage in this case, because
24 by definition, when he sold his stock and made \$70,000, he sold
25 it in a world where, by definition, there would have been 34

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Summation - Mr. Fini

1 other investors who would have received 6.9 times the number of
2 shares. That means that when he sold his stocks for \$940,000,
3 even if you took plaintiff's simplistic view of the world that
4 the only thing you do is discount that by 17 percent, because
5 there would have been 17 percent more shares, that would be
6 \$159,000. 17 percent of 940,000 is \$159,000.

7 There is not one piece of evidence that the plaintiff
8 ever presented, no expert testimony whatsoever, contrary to the
9 teaching in the *Waxman* decision, which held -- at Southern
10 District, held that you need an expert to explain what the
11 effect of the restriction is. These are fact-intensive. The
12 ranges can dramatically vary, could very well establish
13 companies like Apple. Some experts had used a range from 25 to
14 45. And we saw Mr. Hinton today point to a study where
15 discounts went up to, in that particular one, 84 percent.

16 The point is the plaintiff came into this Court and
17 flagrantly did not present an expert. The plaintiff is truly
18 testing the limit of what does it mean to have to at least
19 reasonably approximate damages.

20 Now, the courts that have addressed that with
21 restrictions were *Waxman* and in the Third Circuit -- *Waxman*
22 cited a Third Circuit decision. And it was the *Rochez Bros. v.*
23 *Rhoades* decision. And what those decisions clearly indicated
24 was that if the plaintiff doesn't have any expert testimony at
25 all, there's going to be a gap, a lack here, to allow the Court

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Summation - Mr. Fini

1 to at least feel that there's a stable foundation of damages.

2 So we turn to New York law, as applied by the Second
3 Circuit. The Second Circuit has made clear that the wrongdoer
4 rule is not a free pass; it's not a free pass to have no
5 evidence. In *Process America v. Cynergy Holdings*, 839 F.3d 125
6 (2d Cir. Oct. 5, 2016) at page 141, the Second Circuit repeats
7 well-established law that a plaintiff needs at least a stable
8 foundation. The quote is: A plaintiff need only show a stable
9 foundation for a reasonable estimate of the damages.

10 Now, that decision from 2016 clarifies when the Second
11 Circuit in *Bois*, the *Bois* decision, it cites it. And in that
12 decision, the district judge made a comment of negativity about
13 the wrongdoer rule. And the Second Circuit did not approve of
14 the negative comment that the lower court made.

15 But the decision in *Process America* and long-standing
16 New York law in Second Circuit decisions, including *W.L.*
17 *Hailey*, 388 F.2d 746, December 1967, the court at page 753
18 held: Plaintiff need only show the amount of his damages with
19 reasonable certainty.

20 Now, those Second Circuit decisions in our proposed
21 findings of fact and conclusions of law, we have cited numerous
22 Southern District cases which apply those principles, as the
23 Second Circuit has made clear, have instructed as to the limits
24 of the wrongdoer rule. And those decisions have made clear
25 that the Court has to feel that there is at least a reasonable

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Summation - Mr. Fini

1 approximation of damages here.

2 And in this case, we have a situation where the
3 plaintiff flagrantly, intentionally -- while he was represented
4 by counsel -- elected to put forth a theory of damages which
5 was completely incorrect, did not in any way reasonably
6 approximate damages, and was based solely on the idea that you
7 look at the price of the stock when the restriction could first
8 be lifted six months after the breach.

9 And for the first time, after having no expert, not
10 asking for any expert discovery, not taking my expert's
11 deposition, for the first time, after my expert put in his
12 opening testimony declaration, only after that, for the first
13 time, this case presents a very unique situation where the
14 plaintiff came into court and then says for the first time
15 that, Well, the way you measure it at the date of the breach is
16 to just use a 17 percent discount.

17 But even that new theory doesn't even purport to
18 address the issue of the restriction. That theory only
19 purports to address if the other 34 investors are considered in
20 the but-for world. And as our expert explained, if they
21 aren't, then we would have an absurd situation where if the
22 other -- each of the individual plaintiffs brings individual
23 actions, there will be more damages against the company than if
24 the class sued in a class action of 34 investors.

25 Courts should imagine real-world, fair, but-for worlds

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Summation - Mr. Fini

1 that avoid absurd results and windfalls. These were not sales
2 of bicycles or a good. It was the sale of a stock in common
3 under one subscription agreement, where the plaintiff knew that
4 his bargain was he was buying in with other investors under
5 that subscription agreement. And it would make no sense to
6 ignore those other investors.

7 And now, for the first time that our expert had the
8 opportunity to hear Dr. Cottam's theory of the value of the
9 date of the breach, in this case we now have on the record our
10 expert not only has explained why the plaintiff has not even
11 reasonably approximated his damage, but our expert went
12 further. He's explained that in this case, there's a perfect
13 storm of factors that would dramatically depress the stock to
14 the point where, in his words, Mr. Hinton testified that with a
15 reasonable degree of certainty this would be a penny stock.
16 And he explained his rationale for that.

17 And any issue that your Honor -- I would like to have
18 the opportunity for post-trial briefing, because your Honor did
19 express some reservation as to whether you could hear that
20 explanation. And the answer is, of course, yes. Because
21 otherwise, plaintiffs would be able to play this game. You go
22 into court, you do no reasonable approximation at all with no
23 expert report. Then, after the deadline that the court
24 establishes, the direct testimony, you submit an affidavit that
25 blew that deadline. And then throw in your theory of how to

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Summation - Mr. Fini

1 estimate damages. And then the expert for the defendant gets
2 no chance to respond to that. The law cannot be that way. It
3 cannot be a game where that the court is going to pluck a
4 number out of thin air.

5 Dr. Cottam spent a lot of time on *Daubert*. And he
6 ignores all the learning from the Second Circuit. *U.S. v.*
7 *Litvak*, 808 F.3d 160 (2d. Cir. 2015), at page 180, the Second
8 Circuit goes through the fact that there are all kinds of
9 experts, not just scientific experts. And when you don't have
10 scientific experts -- and, Judge, you're no longer visible. I
11 just wanted to make sure you can still hear me and you're still
12 there.

13 THE COURT: I can hear you.

14 MR. FINI: Okay.

15 In the area of valuation, the Second Circuit has made
16 clear that all sorts of experts get to opine on matters, as
17 long as it's not just the expert's say-so; as long as there are
18 at least learnings and methods, or at least benchmarks or
19 factors that are developed in the industry.

20 And the Rhode Island federal court, in *Probate Court*
21 *v. Bank of America*, 2010 Westlaw 1508922, the District of Rhode
22 Island explained that company valuation is fraught with
23 variability because it depends on so many hypothetical factors.
24 This indeterminacy does not mean that the practice is
25 inherently unreliable; rather, it merely reflects the fact that

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Summation - Mr. Fini

1 accepted valuation techniques obligate an expert to make a
2 variety of simplifications, assumptions, and estimates, based
3 on reasoned judgment and professional training.

4 And your Honor is aware, given your long service on
5 the court, oftentimes when you have valuation experts, they
6 disagree. Reasonable experts can disagree. But in this case,
7 we have a total vacuum on the plaintiff's side.

8 Now, the most interesting decision for your Honor to
9 think about, of course -- and, of course, your scholarly
10 tradition, you've already identified it in your summary
11 judgment motion. It was the *Jamil* decision, J-A-M-I-L. And
12 your Honor will think about that decision.

13 And what I would say to that, your Honor, is *Jamil* was
14 an outlier case where the defendant flagrantly himself offered
15 no expert testimony at all as to why -- as to what the effect
16 would be. And the plaintiff absolutely had some damage,
17 because he had a right to shares in that case, and there was
18 some damage. And the lower court -- this went up to the Second
19 Circuit. The Second Circuit pointed out that the lower court
20 warned the defendants in that case. The Second Circuit
21 decision is at 713 F. App'x --

22 THE COURT: I'm just going to -- I actually recently
23 read the Second Circuit decision in *Jamil*. And it's a
24 nonreported, nonprecedential decision. And as you know, *Jamil*
25 is not binding on me either.

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1 MR. FINI: Right.

2 THE COURT: It's interesting. I obviously respect
3 Judge Rakoff. But there are many differences between that case
4 and this case.

5 MR. FINI: But then, your Honor, I did want to point
6 out one thing.

7 THE COURT: Okay. But you're out of time.

8 MR. FINI: But I did want to point one thing out.

9 The Second Circuit in that case pointed out that Judge
10 Rakoff even warned the parties when they both stipulated and
11 threw up their hands and said no expert, he warned the
12 defendants, I'm going to try to use the prices after the
13 restriction to estimate what the effect would be. And they
14 didn't make any objection. They didn't make any objection at
15 all. They were warned.

16 In our case, we have the exact opposite. We warned
17 all along to the plaintiff, You have no expert. You have no
18 estimation of the damage and the effect of all of these factors
19 at the date of the breach.

20 THE COURT: Thank you.

21 So let me address first the issue of post-trial
22 briefing. I am not going to accept any post-trial briefing at
23 this point. If I decide in the course of my writing my opinion
24 that I need it, I will let you know. But I have the benefit of
25 the transcript. I know what your position is on that.

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Rebuttal - Mr. Cottam

1 I hope I'll have the benefit of the transcript.

2 MR. COTTAM: Your Honor?

3 THE COURT: Yes.

4 MR. COTTAM: You said you would give me two minutes to
5 finish, to respond.

6 THE COURT: Absolutely. You can have two minutes.

7 I inadvertently gave you the full ten minutes, but you
8 can have two minutes. Go ahead.

9 MR. COTTAM: Okay. I never blatantly avoided an
10 expert at all. Again, I already explained to you why Judge
11 Sullivan said the defendants' expert testimony will be limited
12 to, etc., etc. This was a case where the judge was ready to
13 rule *sua sponte* because of the blatant breach of contract.

14 Now, the only people who have been playing games here
15 are Mr. Tejune Kang, Mr. Benjamin Wey, and Radnor, who were
16 together in selling this scam. Per the *Trachtibal* case, one
17 who breaches his contract should not be permitted entirely to
18 escape liability because the amount of damages is uncertain.
19 For the *Cynergy* case, where the nonbreaching party has proven
20 the fact of damages, which I have, the burden of uncertainty of
21 the amount of damages is upon the wrongdoer. Doubts are
22 generally resolved against the party in breach. Certainly
23 there are going to be doubts.

24 Per the *Wakeman* case, to plead a stable foundation, a
25 plaintiff must show there are some facts upon which a jury

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Rebuttal - Mr. Cottam

1 could base a judgment. Not certain, nor strictly accurate, but
2 sufficiently so for the administration of justice. This is one
3 of those cases.

4 The number one issue in *Daubert* is is the theory
5 testable. Actually, testing a theory any expert could come up
6 with here would require getting in a time machine, which is why
7 I said I'm not going to bring an expert here to bring perjury.
8 And in addition, we'd have to get them stock in their hands,
9 and then in a but-for world that didn't involve all of the
10 misrepresentations of the defendants.

11 Defendants' own expert witness has said an analysis
12 here requires hypothetical speculation by logic. This approach
13 is simply untestable and fails -- the first *Daubert* item cannot
14 pass any of them.

15 Tejune Kang and Benjamin Wey brought this hidden
16 reverse merger and shell company not to make any money on a
17 legitimate company, but to use the NASDAQ as a vessel for their
18 stock price manipulation. To induce investment, they had to
19 hide the reverse merger and shell company status, among other
20 things.

21 Over \$80 million of stock was sold before 6D delisted.
22 And the public only had about \$6 million worth. And my just
23 under a million dollars' worth that I sold gives us about \$7
24 million. So someone else sold over \$74 million worth of stock
25 in that time. And the only other shareholders were Tejune Kang

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1 and Benjamin Wey. They got away with their stock price
2 manipulation scheme and, in the process, left possibly
3 thousands of people with a complete loss.

4 I'm here fighting for them. I'm just hoping this case
5 might at least help others in the future. Thank you.

6 THE COURT: Okay. Thank you.

7 So since you were both responsive to my questions
8 during the course of the testimony and even during argument,
9 I'm not sure that I have anything else to ask.

10 Let me just take a look at my notes here and be sure.

11 (Pause)

12 THE COURT: I don't have anything else.

13 If there's anything else that I need to know, I'll
14 reach out to you. But I think with your submissions, as well
15 as with the benefit of the testimony and argument, I feel like
16 I know what I need to know.

17 So thank you very much.

18 Is there anything else we need to deal with here?

19 MR. FINI: Your Honor, I just wanted to say on behalf
20 of myself and my firm -- and I know Dr. Cottam feels the same
21 way -- thank you very much for conducting this. I look forward
22 to seeing you in person, when we all get the vaccine and we're
23 back in person. And I wish you and your family good health.

24 THE COURT: Thank you very much.

25 I wish all of you good health. Thank you for your

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1 patience in conducting the trial this way. It's not the way we
2 normally do things obviously. But I'm able -- I'm glad we were
3 able to do it. I think it actually turned out to be very
4 efficient. I'm glad that we didn't have to have Dr. Cottam
5 travel up to New York. And I don't know where you are,
6 Mr. Hinton, but I'm glad all of us were able to be where we
7 are.

8 So I wish you all good health.

9 Thank you for your hard work and for your submissions.

10 MR. COTTAM: Thank you for your time, your Honor.

11 THE COURT: You're quite welcome.

12 MR. COTTAM: As Mr. Fini said, thank you.

13 THE COURT: Okay. You're welcome.

14 We're adjourned.

15 * * *

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